

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6194

United States Court of Appeals

FOR THE SECOND CIRCUIT

WATERMAN STEAMSHIP CORPORATION,

Plaintiff-Appellant,

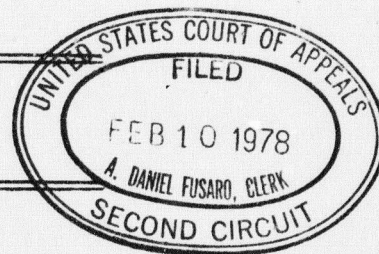
—against—

UNITED STATES OF AMERICA,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX



BURLINGHAM UNDERWOOD & LORD

Attorneys for Plaintiff-Appellant

Waterman Steamship Corporation

One Battery Park Plaza

New York, New York 10004

CIVIL DIVISION, APPELLATE SECTION

Department of Justice

Washington, D.C. 20530

Attorneys for Defendant-Appellee

United States of America

PAGINATION AS IN ORIGINAL COPY

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Docket Entries

76 Civ 5202 Waterman Steamship Corp v. USA

DATE	NR.	PROCEEDINGS
11-22-76	1	Filed complaint issued summons.
12-07-76	(2)	Filed summons and return—served: U.S. Atty., SDof NY by John Manning on 12-03-76 Atty. General, Wash., DC by cert. mail #955612 on 12-01-76
02-01-77	(3)	Filed Deft's ANSWER.
06-16-77	(4)	Filed Pltff's Rule 9(g) Statement of undisputed material facts and Notice of motion for an order for summary judgment. RET: 6-28-77.
06-16-77	(5)	Filed Pltff's Memorandum of law in support of motion for summary judgment.
06-24-77	(6)	Filed Deft's Statement under Rule 9(g) GR for SDNY and notice of cross-motion for summary judgment. RET: 6-28-77.
06-24-77	(7)	Filed Deft's Memorandum of law.
06-27-77	(8)	Filed pltff's reply memorandum of law in support of motion for summary judgment.
10-6-77	9	Filed opinion #46422. . . . Pltff motion for summary judgment is denied; deft's cross-motion for summary judgment dismissing complt is granted. So ordered Duffy J. m/n

2a

DATE	NR.	PROCEEDINGS
10-7-77	10	Filed judgment . . . order that debt USA have judgment against plttf dismissing complt. Clerk m/n
11-21-77	11	Filed undertaking for costs on appeal in amt of \$250.00 (Fireman's Fund)
11-21-77	12	Filed notice of appeal from final judgment entered 10-7-77 of J. Duffy. Mailed notices to Admiralty & Shipping 26 Fed. Plaza

A True Copy
RAYMOND F. BURGHARDT, Clerk

By B. [Illegible]
Deputy Clerk

Complaint

Plaintiff, by its attorneys Burlingham Underwood & Lord, and for its Complaint herein, alleges upon information and belief as follows:

1. This is a suit for recovery of ocean freight and constitutes a claim within the admiralty and maritime jurisdiction of this Court, subject to Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 120 Wall Street, New York, New York.

3. At all material times, plaintiff was the owner of the American flag vessels STONEWALL JACKSON, ROBERT E. LEE and SAM HOUSTON.

4. Defendant is the Government of the United States, a sovereign which has consented to be sued. 46 U.S.C. § 742.

5. On or about July 1, 1974 defendant, acting through the Military Sealift Command, entered into a contract with plaintiff for the carriage of cargo on LASH barges from United States ports on the Gulf of Mexico to various ports in the Middle East.

6. The terms of the contract were set forth in the *Shipping Agreement and Rate Guide*, RG 7, effective July 1, 1974, as amended (hereinafter referred to as the "Agreement").

7. The Agreement granted defendant an option to obtain "exclusive use" of the LASH barges, upon exercise of

which option defendant was obligated to pay freight to plaintiff for such exclusive use on the basis of certain minimum tonnage calculations.

8. The freight rates under the Agreement were structured on the basis that defendant would offload the cargo from the barges at the discharge ports; however, the Agreement also granted defendant an option to require plaintiff to offload the cargo from the barges at the discharge ports, upon exercise of which option defendant was obligated to pay to plaintiff increased freight rates.

9. The Agreement provided for a surcharge on the freight rates whenever the Suez Canal was closed to navigation.

10. The Agreement provided for freight to be earned upon delivery of the cargo at the discharge ports.

11. The Agreement covered the carriage of certain vehicles aboard LASH barges on the following seven voyages.

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Loading Ports</i>	<i>Loading Date</i>	<i>Discharge Ports</i>
G-1382	LEE	Mobile	10/16/74	Aqaba
G-1430	JACKSON	Mobile	11/8/74	Aqaba
G-1010	LEE	Mobile	1/20- 28/75	Damman/ Aqaba
G-1042	JACKSON	Mobile	2/27/75	Jeddah
G-1115	HOUSTON	Mobile	4/6/75	Jeddah
G-1116	LEE	Mobile	4/29/75	Jeddah
G-1174	JACKSON	Mobile/ New Orleans	5/30- 6/3/75	Kuwait/ Jeddah

12. On all seven voyages, the Suez Canal was closed to navigation and defendant exercised its options under the Agreement to obtain "exclusive use" of the LASH barges and to require plaintiff to offload the vehicles from the barges at the discharge ports.

13. Plaintiff duly performed all of its obligations under the Agreement.

14. In accordance with defendant's Standard Billing Instructions, plaintiff invoiced defendant separately for the components of the ocean freights attributable to the offloading of the vehicles from the barges at the discharge ports.

15. Plaintiff properly calculated these components of the ocean freights by multiplying the increase in the freight rates, provided for defendant's exercise of its offloading option, times the minimum tonnage, provided for defendant's exercise of its exclusive use option, and adding the Suez Canal surcharge thereto.

16. Plaintiff invoiced defendant for the following sums in accordance with those calculations:

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Plaintiff's Invoice Numbers</i>	<i>Invoice Dates</i>	<i>Total Invoiced Amount</i>
G-1382	LEE	2472	12/4/74	\$10,293.75
G-1430	JACKSON	2477	12/13/74	17,156.25
G-1010	LEE	2565, 2567	2/7/75	99,937.50
G-1042	JACKSON	2590	3/12/75	53,350.00
G-1115	HOUSTON	2622	4/22/75	84,562.50
G-1116	LEE	2664	5/23/75	99,937.50
G-1174	JACKSON	2689, 2693, 2701	6/23/75	69,187.50

17. Although defendant made part payments to plaintiff against plaintiff's invoices, defendant wrongfully refused to pay and has not paid the following sums which are due and owing to plaintiff under those invoices:

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Invoice</i>	<i>Net Amount Due and Owing</i>
G-1382	LEE	2472	\$ 2,541.09
G-1430	JACKSON	2477	4,235.15
G-1010	LEE	2565	11,719.55
		2567	15,340.40
G-1042	JACKSON	2590	14,160.37
G-1115	HOUSTON	2622	25,960.69
G-1116	LEE	2664	28,169.56
G-1174	JACKSON	2689	3,864.89
		2693	6,239.69
		2701	1,549.02
			\$113,780.41

WHEREFORE, plaintiff prays that judgment be entered in favor of plaintiff and against defendant in the amount of \$113,780.41, plus interest and costs, and that plaintiff have such further and other relief as the Court deems just and proper.

Dated: New York, New York
November 16, 1976

BURLINGHAM UNDERWOOD & LORD
Attorneys for Plaintiff

Answer

The answer of defendant, United States of America, to the complaint of plaintiff, Waterman Steamship Corporation, shows upon information and belief, as follows:

1. Denies each and every allegation contained in Paragraph 1 of the complaint, except admits that the suit constitutes a claim within the admiralty and maritime jurisdiction of this Court, subject to Rule 9(h) of the Federal Rules of Civil Procedure.
2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 2 of the complaint.
3. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 3 of the complaint.
4. Admits that defendant, United States of America, was and still is a sovereign which has consented to be sued, under certain terms and conditions, pursuant to the provisions of the Suits in Admiralty Act, 46 U.S.C. §§741-752.
5. Admits each and every allegation contained in Paragraph 5 of the complaint.
6. Admits each and every allegation contained in Paragraph 6 of the complaint.
7. Admits each and every allegation contained in Paragraph 7 of the complaint.

8. Admits each and every allegation contained in Paragraph 8 of the complaint.

9. Admits each and every allegation contained in Paragraph 9 of the complaint.

10. Admits each and every allegation contained in Paragraph 10 of the complaint.

11. Admits that the agreement covered, inter alia, the voyages enumerated in Paragraph 11 of the complaint.

12. Denies each and every allegation contained in Paragraph 12 of the complaint, except admits that the defendant exercised its options under the Agreement to obtain "exclusive use" of the LASH barges and to require plaintiff to offload the vehicles from the barges at the discharge ports.

13. Denies each and every allegation contained in Paragraph 13 of the complaint.

14. Denies each and every allegation contained in Paragraph 14 of the complaint, except admits that plaintiff invoiced defendant separately for charges attributable to the offloading of the vehicles from the barges at the discharge ports.

15. Denies each and every allegation contained in Paragraph 15 of the complaint, except admits that the plaintiff made the calculations set forth therein.

16. Admits the allegations of Paragraph 16 of the complaint that plaintiff invoiced the defendant the sums set forth therein, except denies that the plaintiff invoiced the defendant in the sum of \$53,350 on invoice Number 2590.

17. Deines each and every allegation contained in Paragraph 17 of the complaint.

For a First Affirmative and Complete Defense, Defendant, United States of America, Alleges Upon Information and Belief as Follows:

18. Plaintiff has failed to state a cause of action upon which relief can be granted.

For a Second Affirmative and Complete Defense, Defendant, United States of America, Alleges Upon Information and Belief as Follows:

19. Plaintiff has failed to exhaust its required administrative remedies.

WHEREFORE, defendant, United States of America, demands that the complaint be dismissed with costs, and that the United States of America have such other and further relief as may be just and proper.

Dated: New York, New York
January 31, 1977

ROBERT B. FISKE, JR.
United States Attorney

GILBERT S. FLEISCHER
Attorney in Charge
Admiralty & Shipping Section
Department of Justice

Attorneys for United States

Plaintiff's Rule 9(g) Statement

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 120 Wall Street, New York, New York.

2. At all material times, plaintiff was the owner of the American flag vessels STONEWALL JACKSON, ROBERT E. LEE, and SAM HOUSTON.

3. Defendant is the Government of the United States, a sovereign which has consented to be sued. 46 U.S.C. §742.

4. On or about July 1, 1974, defendant, acting through the Military Sealift Command, entered into a contract with plaintiff for the carriage of vehicles on LASH barges from United States ports on the Gulf of Mexico to various ports in the Middle East.

5. The terms of the contract were set forth in the *Shipping Agreement and Rate Guide*, RG 7, effective July 1, 1974 (hereinafter referred to as the "Agreement"). The contract was amended in some respects on January 1, 1975. True copies of the agreement and amendment are annexed hereto as Exhibits C1 and C2.

6. The Agreement covered the carriage of certain vehicles aboard LASH barges on the following seven voyages:

11a

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Loading Ports</i>	<i>Loading Date</i>	<i>Discharge Ports</i>
G-1382	LEE	Mobile	10/16/74	Aqaba
G-1430	JACKSON	Mobile	11/8/74	Aqaba
G-1010	LEE	Mobile	1/20- 28/75	Damman/ Aqaba
G-1042	JACKSON	Mobile	2/27/75	Jeddah
G-1115	HOUSTON	Mobile	4/6/75	Jeddah
G-1116	LEE	Mobile	4/29/75	Jeddah
G-1174	JACKSON	Mobile/ New Orleans	5/30- 6/3/75	Jeddah/ Kuwait

7. The Agreement also covered the carriage of certain vehicles aboard LASH barges on the following additional three voyages:

<i>Voyage Identification Number.</i>	<i>Vessel</i>	<i>Loading Ports</i>	<i>Loading Ports</i>	<i>Discharge Ports</i>
A-2856	JACKSON	Baltimore	11/25/74	Aqaba
A-1163	LEE	Baltimore	1/29/75	Aqaba
A-1172	JACKSON	Baltimore	2/25/75	Aqaba

8. In connection with some of the cargoes carried by plaintiff on all ten voyages, defendant exercised its options under the Agreement to obtain "exclusive use" of the LASH barges and to require plaintiff to offload the vehicles from the barges at the discharge ports (Exs. C1 and C2, pp. 53, 60-61).

9. The parties agreed that 75% of the inside cubic capacity of each barge was equal to 300 measurement tons.

10. The Suez Canal was closed to navigation at the commencement of all ten voyages.

11. Plaintiff invoiced defendant in accordance with defendant's standard billing instructions, a true copy of which is annexed hereto as Exhibit D.

12. Plaintiff invoiced defendant for offloading the barges at the discharge ports on the seven voyages described in paragraph 6 above as follows:

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Plaintiff's Invoice Number</i>	<i>Invoice Dates</i>	<i>Total Invoiced Amount</i>
G-1382	LEE	2472	12/4/74	\$10,293.75
G-1430	JACKSON	2477	12/13/74	17,156.25
G-1010	LEE	2565 2567	2/7/75	99,937.50
G-1042	JACKSON	2590	3/12/75	55,350.00
G-1115	HOUSTON	2622	4/22/75	84,562.50
G-1116	LEE	2664	5/23/75	99,937.50
G-1174	JACKSON	2689 2693 2701	6/23/75	69,187.50

True copies of the invoices are annexed hereto as Exhibits E 1 through E 10.

13. Although defendant made part payments to plaintiff against plaintiff's invoices, defendant withheld, refused

to pay and has not paid the following sums under the invoices described in paragraph 12 above:

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Invoice</i>	<i>Net Amount Due and Owing</i>
G-1382	LEE	2472	\$ 2,541.09
G-1430	JACKSON	2477	4,235.15
G-1010	LEE	2565	11,719.55
		2567	15,340.40
G-1042	JACKSON	2590	14,160.37
G-1115	HOUSTON	2622	25,960.69
G-1116	LEE	2664	28,169.56
G-1174	JACKSON	2689	3,864.89
		2693	6,239.69
		2701	1,549.02
Total			\$113,780.41

True copies of defendant's invoice adjustment schedules are annexed hereto as Exhibits F 1 through F 5.

14. Plaintiff invoiced defendant for offloading the barges on the three voyages described in paragraph 7 above. Defendant paid one of these invoices in full and initially made only part payments to plaintiff against the other two invoices, but ultimately paid all three invoices in full as follows:

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Plaintiff's Invoice Number</i>	<i>Invoice Dates</i>	<i>Total Amount Invoiced For Offloading</i>
A-2856	JACKSON	7404	12/20/74	\$ 6,862.50
A-1163	LEE	7421	3/07/75	30,750.00
A-1172	JACKSON	7434	4/07/75	26,906.25

True copies of the invoices and other documents evidencing these transactions are annexed hereto as Exhibits G1 through G4, H1 through H4, and I.

15. On November 16, 1976, plaintiff brought suit herein for recovery of the withheld freights on seven of the ten voyages, as described in paragraph 13 above. A true copy of the Complaint is annexed hereto as Exhibit A.

16. On January 31, 1977 defendant served its answer, a true copy of which is annexed hereto as Exhibit B.

17. In January and February 1977, after commencement of this suit, defendant deducted from other funds due and owing to plaintiff and withheld the following sums in connection with the three invoices described in paragraph 14 above, as follows:

<i>Voyage Identification Number</i>	<i>Vessel</i>	<i>Invoice</i>	<i>Net Amount Subse- quently Withheld</i>
A-2856	JACKSON	7404	\$ 2,050.74
A-1163	LEE	7421	7,756.69
A-1172	JACKSON	7434	7,182.05
		Total	\$16,989.48

True copies of defendant's invoice adjustment schedules and other documents evidencing these transactions are annexed hereto as Exhibits J1 through J4.

Dated: New York, New York
June 15, 1977

Portions of Exhibit C-1

[13]

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SHIPPING AGREEMENT AND RATE GUIDE: RG-7

PART I—CONDITIONS OF SERVICE

1:5 *Loading and Discharging*

• • • • •

(b) The Government shall perform or arrange for the loading and discharging of cargo, and such shall be prosecuted with reasonable dispatch in accordance with the established custom of the port. The cargo shall be loaded in the vessel using no more space than would normally be required commercially for the loading of cargo with like shipping characteristics. The Carrier shall be compensated by the Government for actual direct damages caused the Carrier by fault of the Government or its stevedores to so perform the loading or discharging of cargo, provided, however, that claims for such damages have been directed at the time to the attention of the Contracting Officer's representative and thereafter within a reasonable period confirmed and supported in writing.

• • • • •

[53]

SECTION II—STATEMENT OF BASIC RATES

1. APPLICATION OF BASIC RATES FOR CARGO: (All route indices except as provided in exceptions below):

A. All rates and charges are stated in dollars and cents, and, unless otherwise specified, apply per measurement ton of 40 cubic feet (MT) manifest measure. Basic rates are applicable on an FIO basis.

• • • • •

E. BARGE EXCLUSIVE USE PAYMENT: Cargo shipped in a barge required for exclusive use by the Contracting Officer for military cargo shall be freighted at the applicable cargo category rate subject to a minimum charge per barge computed by applying the Cargo NOS rate to seventy five percent (75%) of the inside cubic capacity of the barge.

.

[58]

9. WAKE ISLAND LOADING AND/OR DISCHARGING ALLOWANCES (Route Index Nos. 01, 08, 14, 16, 19 and 45 (Far East trades only)): When the Carrier loads or discharges cargo at Wake Island, the basic rate for the carriage of such cargo shall be increased by \$5.00 per MT, LT or MBM, whichever is applicable, as compensation therefor. Loading and discharging at Wake Island shall consist of the handling of cargo between the vessel's holds and lighters alongside.

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[60]

12. APPLICATION OF RATES IN THE SOUTH ASIA & MIDDLE EAST TRADES (Route Index Nos. 07, 13, 14, 44, and 47 only): The South Asia & Middle East rates set forth herein apply on an FIO basis subject to the following option and special provisions:

A. The Government shall have the option to require the Carrier to discharge or load cargo at the foreign port. The following provisions shall apply whenever that option is exercised:

.

[61]

C. When the Government exercises the option set forth in "A" above, the applicable FIO rates set forth herein

shall be increased by the charges set forth in the *Table of Charges for Stevedoring and Terminal Services* to cover cost of discharging or loading between place of rest on the ship and the end of ship's tackle at the overseas port.

13. SUEZ CANAL SURCHARGE: The rates for routes which would normally involve transit of the Suez Canal do not contain a contingency for Suez Canal blockage. Accordingly, the Carrier shall be reimbursed a surcharge covering additional costs resulting from such blockage. The appropriate surcharge shall be subject to separate negotiations between the Carrier and the Contracting Officer when cargo is offered for shipment in accordance with the ARTICLE entitled "CANAL BLOCKAGE" in this Agreement. In accordance with commercial practice, such surcharge shall be applied on the basic rate and to the charges for stevedoring and terminal services as set forth in the STATEMENT OF RATES when stevedoring is performed by or for the account of the Carrier.

• • • • •

[63]

TABLE OF CHARGES FOR STEVEDORING AND TERMINAL SERVICES
(SOUTH ASIA & MIDDLE EAST TRADES)

The following charge shall be added to the rates set forth in this section for Trade Route Index Nos. 07, 13, 44 & 47 when cargo loading or discharging at the overseas port is performed under the option provided in paragraph 12A of this section. (CHARGES ARE STATED PER MEASUREMENT TON FOR ALL CARGO CATEGORIES EXCEPT WEIGHT CARGO, WHICH ARE STATED PER LONG TON) —

L = LOADING D = DISCHARGING

		ALEX RI-07, 13 ZONES		CENT RI-07, 13 ZONES		WATR RI-07, 13, 47 ZONES	
		A	B	A	B	A	B
010 CARGO-NOS	D	5.25	6.75	4.06	3.72	9.25	9.75
	L	5.25	6.75	4.06	3.72	9.25	9.75
020 LGHT-VEH	D	5.25	6.75	3.43	3.43	9.15	9.35
	L	5.25	6.75	3.43	3.08	9.15	9.35
030 HVY-VEH	D	5.25	6.75	3.43	3.08	9.25	9.75
	L	5.25	6.75	3.43	3.08	9.25	9.75

.

ROUTE INDEX 13			BREAK BULK SERVICE		RFP 900		EFFECTIVE 1 JULY 1974		
U. S. GULF COAST-SOUTH ASIA & MIDDLE EAST AREA			ZONE A	AQARA/RED SEA/ARABIAN GULF RANGE				-CONUS OUTROUND	
010 CARGO-NOS	020 LGHT-VEH	030 HVY-VEH	040 REEFER	050 HZD-CARGO	060 MT-CONEX	080 WOOD-PROD	090 WGHT-L/T	100 X-LENGTH	110 ON-DK-DIS
64.64 CENT	69.50 CENT	72.50 CENT	175.08 WATR	101.58 CENT			61.55 CENT	3.25 AELX	2.50% WATR
95.14 WATR	69.74 WATR	85.14 WATR	203.24 CENT*	112.75 WATR			80.61 WATR	5.85 WATR	5.00% CENT AELX
96.52 AELX	107.52 AELX*	107.52 AELX	215.62 AELX*	155.52 AELX			83.52 AELX	6.59 CENT	

• • • • •

Portions of Exhibit C-2

STATEMENT OF BASIC RATES

[53]

• • • • •

SECTION II—

1. APPLICATION OF BASIC RATES FOR CARGO: (All route indices except as provided in exceptions below):

• • • • •

E. MINIMUM PER BARGE: Vehicles shipped in a barge shall be freighted at the applicable rate subject to a minimum charge per barge computed by applying the lowest of the three commodity rates NOS, light vehicles, heavy vehicles to 300 MT for LASH barges and 600 MT for SEABEE barges. This minimum is applicable only when the barge is loaded exclusively with vehicles booked under the terms of this Agreement.

• • • • •

TABLE OF CHARGES FOR STEVEDORING AND TERMINAL SERVICES (SOUTH ASIA & MIDDLE EAST TRADES)

The following charge shall be added to the rates set forth in this section for Trade Route Index Nos. 07, 13, 44 & 47 when cargo loading or discharging at the overseas port is performed under the option provided in paragraph 12A of this section. (CHARGES ARE STATED PER MEASUREMENT TON FOR ALL CARGO CATEGORIES EXCEPT WEIGHT CARGO, WHICH ARE STATED PER LONG TON)

L = LOADING D = DISCHARGING

		ALEX RI-07, 13 ZONES		CENT RI-07, 13 ZONES		WATR RI-07, 13, 47 ZONES	
		A	B	A	B	A	B
010 CARGO-NOS	D	5.75	6.90	8.10	7.45	10.25	10.75
	L	5.75	6.90	8.10	7.45	10.25	10.75
020 LGHT-VEH	D	5.75	6.90	6.85	6.85	10.25	10.75
	L	5.75	6.90	6.85	6.85	10.25	10.75
030 HVV-VEH	D	5.75	6.90	6.85	6.15	10.25	10.75
	L	5.75	6.90	6.85	6.15	10.25	10.75

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Portions of Exhibit D
STANDARD BILLING INSTRUCTIONS
FOR
MSC SHIPPING/CONTAINER AGREEMENT

* * * * *

2. After the ship has been loaded, the Carrier will submit a properly certified invoice, in quintuplicate, to the MSC activity designated as the paying office in the Shipping Order.

3. Invoices will be processed and paid in accordance with ARTICLE 1:4 PAYMENT of this Agreement. *(In order to take advantage of the 48-hour payment provision set forth in paragraph (b) of ARTICLE 1:4, Carrier may wish to submit invoices for ocean freight separately and in advance of billing for drayage, line-haul and other services incidental to ocean transportation.)*

* * * * *

Exhibits E-1 through E-10

INVOICE

Exh. E1

Form 78A-271

WATERMAN STEAMSHIP CORPORATION

INCORPORATED IN NEW YORK

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112
Date December 4, 1974

Carrier WATERMAN STEAMSHIP CORPORATIONInvoice No. 2472

SA 1530

1) Shipping Order No. 115-92) Shipping/Container Agreement No. G 15023) Ship Name ROBERT D. LEE VOYAGE 2Voyage Document No. G 1502

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
October 16, 1974 Mobile Lagada 13A	Discharge Cost	MT	16 Large Vehicles	9.00	9.15	8,235.00
	Discharge				25%	2,052.75
				TOTAL		10,287.75

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS PERFORMED BY WATERMAN STEAMSHIP CORPORATION DUE TO LACK OF GOVERNMENT FACILITIES THIS PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. McInerney
A. J. McInerney, Chief Accountant

I certify that the above bill is correct and just, that payment therefor has not been received; that all statutory requirements as to American Production and Labor Standards and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION

By A. J. McInerney

5 DEC 1974

DATE

CERTIFIED THAT SERVICES WERE OBTAINED

SUBJECT TO AUDIT, THIS CHARGE IS PROPERLY FOR THE ACCOUNT OF MSC UNDER THE TERMS OF THE APPLICABLE SHIPPING AGREEMENT.

MSC SA 1530

J. P. McInerney
CONTRACTING OFFICER
MSCGULF

12-10095

INVOICE

Exh. E 2

WATERMAN STEAMSHIP CORPORATION

INCORPORATED IN NEW YORK

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112
Date DECEMBER 13, 1974

Carrier WATERMAN STEAMSHIP CORPORATIONInvoice No. 2771) Shipping Order No. 151-102) Shipping/Container Agreement No. 1003) Ship Name T. B. & C. F. T. S.Voyage Document No. G 2120

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
November 8, 1974 Mobile (241-0011) 131	Discharge Cargo	12	30 Large Vehicles	100.00	9.25	\$ 13,725.00
					255	2,451.25
				201.1		\$ 17,256.25

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American Production and Labor Standards and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION
By A. J. Maloney
A. J. MALONEY, Chief Accountant

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS PERFORMED BY WATERMAN STEAMSHIP CORPORATION DUE TO LACK OF GOVERNMENT FACILITIES THIS PORT.

WATERMAN STEAMSHIP CORPORATION
By A. J. Maloney
A. J. Maloney, Chief Accountant

DATE 17 DEC 1974

CERTIFIED THAT SERVICES WERE ORDERED

J. J. [Signature]
CONTRACTING OFFICER
MSCGULF

SUBJECT TO AUDIT, THIS CHARGE IS PROPERLY FOR THE ACCOUNT OF MSC UNDER THE TERMS OF THE APPLICABLE SHIPPING AGREEMENT.

MSC-SA 152

25a

Form 75A-7-71

INVOICE

Exh. E3

WATERMAN STEAMSHIP CORPORATION

INCORPORATED IN NEW YORK

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:

705 Richards Building
New Orleans, La. 70112

Date February 7, 1975

Carrier WATERMAN STEAMSHIP CORPORATION

Invoice No.

2565

1) Shipping Order No. 217-16

2) Shipping/Container Agreement No. SA 1620

3) Ship Name ROBERT M. LEE W.Y. 3

Voyage Document No. G 1010

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
January 28, 1975 Mobile Mobile 13-A	Discharge Cost	MT	78 Large Vehicles	3900.00	10.25	\$ 39,975.00
	Surcharge				25%	9,993.75
					Total	\$ 49,968.75

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS
PERFORMED BY WATERMAN STEAMSHIP CORPORATION
DUE TO LACK OF GOVERNMENT FACILITIES
THIS PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. Maloney, Chief Accountant

I certify that the above bill is correct and just; the payment therefor has not been received; that all statutory requirements as to American Production and Labor Standards and all conditions of purchase applicable to the transactions have been complied with; and that state and local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. MALONEY, Chief Accountant

FEB 11 1975

DATE

CERTIFIED THAT SERVICES WERE ORDERED

OBJECTIVE AUDIT. THIS CHARGE IS PROPER FOR
THE ACCOUNT OF MEC AND THE TERMS OF THE
OFFER ARE ACCEPTED AS A RESULT

US SA 1832

04-10171

J. J. [Signature]
CONTROLLER
MEC/JULF

26a

Form 79A-7-71

INVOICE

Exh. E4

WATERMAN STEAMSHIP CORPORATION

INCORPORATED IN NEW YORK

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112
Date February 7, 1975

Carrier WATERMAN STEAMSHIP CORPORATIONInvoice No. 25671) Shipping Order No. 217-152) Shipping/Container Agreement No. SA 18203) Ship Name ROBERT M. LEE VGT. 3Voyage Document No. G 1010

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
January 28, 1975 Mobile Baton Rouge 13	Discharge Cost	MT	91 Large Vehicles	3900.00	10.25	\$ 39,975.00
	Surcharge				25%	9,993.75
					Total	\$ 49,968.75

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS
PERFORMED BY WATERMAN STEAMSHIP CORPORATION
DUE TO LACK OF GOVERNMENT FACILITIES
THIS PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney, Chief Accountant

I certify that the above bill is correct and just, that pay-
ment therefor has not been received; that all statutory
requirements as to American Production and Labor
Standards and all conditions of purchase applicable to
the transactions have been complied with and that all
or local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION

DATE 1-31-75

CERTIFIED THAT SERVICES WERE RENDERED

SUBJECT TO AUDIT THIS INVOICE IS PROPERLY FOR
THE ACCOUNT OF COMMANDER THE
FEDERAL BUREAU OF INVESTIGATION

MSC SA 15.32

03-10157

J. J. Maloney
VOLUME 100 OFFICE
MSCGOLF

$$E_{0.1} = 29.6 - 7.71$$

INCORPORATED IN ~~DELAWARE~~

Mail Check to:
708 Richards Building
New Orleans, La. 70112

Date March 12, 1975

Invoice No. 2598

1) Shipping Order No. 21.7-19

2) Shipping/Container Agreement No. 5-1820

3) Ship Name USNS L. J. JAMES VOY. 3

Voyage Document No. 1042

3) Ship Name	4) Sailing Date	5) Port of Loading	6) Port of Discharge	7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
	February 27, 1975	Mobile	Jedah	20 A	Immediate Discharge Cost	MT	24 Large Vehicles	3600.00	10.25	\$ 36,900.00
					Surcharge	MT			25%	9,225.00
										46,125.00
					Congestion Charge	MT			20%	9,225.00
									Total	\$ 55,350.00

• See attached adjustment schedule

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS
PERFORMED BY WATERMAN STEAMSHIP CORPORATION
DUE TO LACK OF GOVERNMENT FACILITIES
THIS PORT. WATERMAN STEAMSHIP CORPORATION

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. Maloney, Chief Accountant

SUBJECT TO ADJUST THIS CHARGE ON PERLY PAGE
THE ACCOUNT OF MS. UNDER THE TERMS OF THE
A. HICKMAN SHOPPING AGREEMENT

NO. 6A 1925

is correct and just, that pay-
ment be made by the State of New York
to the Federal Government, that of statutory
obligation of the United States and later
the payment of purchase price attributable to
the purchase of the land from the State
of New York.

1220 SHIP CORPORATION

ad Maloney

DATE			
CERTIFIED THAT SIGNATURE			

J. H. Smith

05-10187

STEAMSHIP

WATERMAN TRANSPORT CORPORATION

INCORPORATED IN ~~DELAWARE~~ *N.Y.*

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112
Date April 22, 1975

Carrier WATERMAN TRANSPORT CORPORATION Invoice No. 2622
315-23 2) Shipping/Container Agreement No. SA 1820
 1) Shipping Order No. 315-23 Voyage Document No. G 1115
 3) Ship Name SA HOUSTON VOY. 3

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
April 6, 1975 Hoboken Jeddah 13 A	Discharge Cost	MT	154 Large Vehicles	6600.00	10.25	\$ 67,650.00
	Surcharge				255	16,912.50
					Total	\$ 84,562.50

I certify that the above bill is correct and just, that payment therefor has not been received; that all statutory requirements as to American Production and Labor Standards and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION

By A. J. Quoney

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS PERFORMED BY WATERMAN STEAMSHIP CORPORATION DUE TO LACK OF GOVERNMENT FACILITIES THIS PORT.

WATERMAN STEAMSHIP CORPORATION

COPIES OF THIS BILL ARE TO BE FURNISHED TO THE APPLICANT FOR THE CARGO.

1000000 1820

THIS BILL IS PROPERLY FOR TERMS OF THE

By A. J. Quoney, Chief Accountant

CERTIFIED THAT THE CARGO IS ORDERED

J. W. Jones
CONTROLLING OFFICER
KSC CULF

66-10201

23 APR 1975

29a

Exh. E7

Form 79B-7.7.

STEAMSHIP
WATERMAN TRANSPORT CORPORATION
INCORPORATED IN ~~NEW YORK~~ New York

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112
Date

May 23, 1975

Carrier Steamship
WATERMAN TRANSPORT CORPORATION

Invoice No. 26541) Shipping Order No. 318-242) Shipping/Container Agreement No. SA 18203) Ship Name ROBERT E LEE VOY. 4Voyage Document No. G 1116

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
April 29, 1975 Mobile Jeddah 13A	Discharge Cost	MT	182 Large Vehicles	7800.00	10.25	\$ 79,950.
	Surcharge				25%	19,987.
					TOTAL	\$ 99,937.

See attached adjustment schedule

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American Production and Labor Standards and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney

A. J. Maloney, Chief Accountant

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS
PERFORMED BY WATERMAN STEAMSHIP CORPORATION
DUE TO LACK OF GOVERNMENT FACILITIES
THIS PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney

A. J. Maloney, Chief Accountant

DATE 2 1975

DATE

CERTIFIED THAT SERVICES WERE ORDERED

J. P. Smith
OFFICER
MCCOULF

SHIPPING ORDER NO. 1820

MCCOULF

06-10214

30a

Exh. E8

Form 98-77

WATERMAN STEAMSHIP CORPORATION

INCORPORATED IN NEW YORK

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112

Date

June 23, 1975

Carrier **WATERMAN STEAMSHIP CORPORATION**

Invoice No. 26891) Shipping Order No. 355.282) Shipping/Container Agreement No. SA 18203) Ship Name STONEWALL JACKSON VOY. 4Voyage Document No. G 1174

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
May 30, 1975 Mobile Kuwait 13A	Discharge Cost Surcharge	MT	49 Large Vehicles	2100.00	10.25 25% TOTAL	\$ 21,525.00 <u>5,381.25</u> \$ 26,906.25

See attached adjustment schedule

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS PERFORMED BY WATERMAN STEAMSHIP CORPORATION DUE TO LACK OF GOVERNMENT FACILITIES THIS PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. Maloney, Chief Accountant

I certify that the above bill is correct and is the amount therefor has not been received; that all requirements as to American Production and Standards and all conditions of purchase applicable to the transactions have been complied with; and that state and local sales taxes are not included in the amounts billed

WATERMAN STEAMSHIP CORPORATION

25 By A. J. Maloney
A. J. MALONEY, Chief Accountant

DATE

CERTIFIED THAT SERVICES WERE ORDERED

OBJECT TO THIS BILL IS PROPERLY FOR THE ACCOUNT OF THE USER UNDER THE TERMS OF THE APPLICATION SHIPPING AGREEMENT.

SC SA 1820

08-10018

[Signature]
CONTRACTING OFFICER

31a

EXH. E9

Form 79B-7-71

WATERMAN STEAMSHIP CORPORATION

INCORPORATED IN NEW YORK

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112

Date **June 23, 1975**

Carrier **WATERMAN STEAMSHIP CORPORATION**

Invoice No. **2693**

1) Shipping Order No. **366.28**

2) Shipping/Container Agreement No. **SA 1820**

3) Ship Name **STONEWALL JACKSON VOY. 4**

Voyage Document No. **G 1174**

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
May 30, 1975 Mobile Jeddah 13A	Discharge Cost Surcharge	MT	70 Large Vehicles	3000.00	10.25 25% TOTAL	\$ 30750.00 <u>7687.50</u> \$ 38,437.50

See attached adjustment schedule

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS PERFORMED BY WATERMAN STEAMSHIP CORPORATION DUE TO LACK OF GOVERNMENT FACILITIES THIS PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. Maloney, Chief Accountant

DATE **25 JUN 1975**

CERTIFIED THAT SERVICES WERE OBTAINED BY **WATERMAN STEAMSHIP CORPORATION**

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American Production and Labor Standards and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed

SHOWN TO BE THE CHARGE IS PROPERLY CHARGED BY THE ACCOUNT TO THE USER OF THE TERMS OF THE CONTRACTING OFFICER'S APPLICABLE SHIPPING AGREEMENT.

By A. J. Maloney
A. J. MALONEY, Chief Accountant

100000

1P2c

MSCGULF

INVOICE
STEAMSHIP
WATERMAN TRANSPORT CORPORATION
INCORPORATED IN ~~NEW YORK~~ New York

COMMANDER
MILITARY SEALIFT COMMAND
4400 DAUPHINE STREET
NEW ORLEANS, LA. 70140

Mail Check to:
708 Richards Building
New Orleans, La. 70112
Date

June 23, 1975

Carrier WATERMAN STEAMSHIP TRANSPORT CORPORATION

Invoice No. 2701

1) Shipping Order No. 356.28

2) Shipping/Container Agreement No. SA 1820

3) Ship Name STONEWALL JACKSON VOY. 4

Voyage Document No. Q 1174

4) Sailing Date 5) Port of Loading 6) Port of Discharge 7) Route Index & Zone	10. Type Service or Charge	11. Unit of Measure	12. Cargo Category	13. Quantity	14. Applicable Rate per Each Unit of Measure	15. Amount Billed
June 3, 1975 New Orleans Jeddah 13A	Discharge Cost	MT	6 Large Vehicles	300.00	10.25	\$ 3975.00
	Surcharge				25%	<u>768.75</u>
						\$ 3,843.75

See attached adjustment schedule

THIS IS TO CERTIFY THAT ALL DISCHARGE WAS
PERFORMED IN ACCORDANCE WITH THE TERMS OF THE
TARIFF DUE TO DISCHARGE OF THE VESSEL
IN THE PORT.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. Maloney, Chief Accountant

SUBJECT TO AUDIT, THIS CHARGE IS PROPERLY FOR
THE ACCOUNT OF THE ADDRESSEE UNDER THE TERMS OF THE
APPLICABLE SHIPPING AGREEMENT.

MSCGULF 1/222

I certify that the above bill is correct and just; that pay-
ment therefor has not been received; that all statutory
requirements as to American Production and Labor
Standards and all conditions of purchase applicable to
the transactions have been complied with; and that state
or local sales taxes are not included in the amounts billed.

WATERMAN STEAMSHIP CORPORATION

By A. J. Maloney
A. J. MALONEY, Chief Accountant

DATE 25 JUN 1975

CERTIFIED THAT SERVICES WERE ORDERED

A. J. Maloney
CONTRACTING OFFICER
MSCGULF

Exhibits F-1 through F-5

Exh. F1

INVOICE ADJUSTMENT
 100-204-2169 11/7/51
 MILITARY SEALIFT COMMAND GULF SUBAREA
 NEW ORLEANS, LOUISIANA 70146

DEPARTMENT OF THE NAVY
 MILITARY SEALIFT COMMAND GULF SUBAREA
 NEW ORLEANS, LOUISIANA 70146

DATE: 9 SEPTEMBER 197

CONTRACTOR			VESSEL	
WATERMAN STEAMSHIP CORP.			S.S. VARIOUS (SEE BELOW)	
CONTRACT NUMBER	INVOICE NUMBER	INVOICE DATE	VOYAGE NUMBER	PERIOD COVERED

XXXXXXXXXXXXXXXXXXXX NIF-10035

\$ 189,799.53

DEDUCTIONS TO COLLECT OVERPAYMENT ON DISCHARGE COSTS:

E3 ✓ ROBERT E. LEE G-1010 VOY-3 MOBILE/AQABA
 DISCHARGE COSTS
 VEHICLES, HEAVY (\$9,591.64)
 SURCHARGE 25% (2,127.91)

E4 ✓ MOBILE/DAMMAN
 VEHICLES, HEAVY (\$12,272.32)
 SURCHARGE 25% (3,068.08)

E1 ✓ ROBERT E. LEE G-1282 VOY-2 MOBILE/AQABA
 DISCHARGE COSTS
 VEHICLES, HEAVY (\$2,032.87)
 SURCHARGE 25% (508.22)

E6 ✓ SAM HOUSTON G-1115 VOY-3 MOBILE/JIDDA
 VEHICLES, HEAVY (\$20,768.55)
 SURCHARGE 25% (5,192.14)

E2 ✓ STONEWALL JACKSON, G-1430 VOY-2 MOBILE/AQABA
 DISCHARGE COSTS
 VEHICLES, HEAVY (\$3,388.12)
 SURCHARGE 25% (847.03)

E5 ✓ STONEWALL JACKSON G-1042 VOY-3 MOBILE/JIDDA
 DISCHARGE COSTS
 VEHICLES, HEAVY (\$11,328.30)
 SURCHARGE 25% (\$2,832.07)

TOTAL DEDUCTIONS \$ 73,957.25

TOTAL AMOUNT FOR PAYMENT \$ 115,842.28

INVOICE ADJUSTMENT SCHEDULE
889-801A 72ND/3 (REV. 11/68)
NA. GULF FORM 7240-2

34a

Exh. F2

DEPARTMENT OF THE NAVY
MILITARY SEALIFT COMMAND GULF SUBAREA
NEW ORLEANS, LOUISIANA 70146

DATE 12 AUGUST 1975

CONTRACTOR WATERMANS STEAMSHIP CORP.			VESSEL S.S. STONEWALL JACKSON, G-1820	
CONTRACT NUMBER SA-1820 RI-13	INVOICE NUMBER -A 2693	INVOICE DATE JUNE 23, 1975	VOYAGE NUMBER 4	PERIOD COVERED

AMOUNT OF ORIGINAL INVOICE

\$38,437.50

DEDUCTIONS

VEHICLES, HEAVY	2513.00 M/T	\$10.25 RATE	\$25,758.25
SURCHARGE 25%			6,439.56
			<u>\$32,197.81</u>

TOTAL DEDUCTIONS \$ 6,239.69

TOTAL APPROVED FOR PAYMENT \$ 32,197.81

35a

Exh. F3

INVOICE ADJUSTMENT SCHEDULE
 SAG-BOLA-7290/2 (REV. 11/68)
 MSC GULF FORM 7240-2

DEPARTMENT OF THE NAVY
 MILITARY SEALIFT COMMAND GULF SUBAREA
 NEW ORLEANS, LOUISIANA 70146

DATE: 12 AUGUST 1975

CONTRACTOR			VESSEL	
WATERMAN STEAMSHIP CORP.			S.S. STONEWALL JACKSON, G-1174	
CONTRACT NUMBER	INVOICE NUMBER	INVOICE DATE	VOYAGE NUMBER	PERIOD COVERED
SA-1820 RI-13A	2689	JUNE 23, 1975	4	

\$ 26,906.25

AMOUNT OF ORIGINAL INVOICE

DEDUCTIONS

DISCHARGE COSTS

VEHICLES HEAVY	1798.35 M/T	\$10.25 RATE	\$18,433.09
SURCHARGE 25%			4,608.27
			<u>\$23,041.36</u>

TOTAL DEDUCTIONS \$ 3,864.89

TOTAL APPROVED FOR PAYMENT \$ 23,041.36

36a

Exh. F4

SA-1820 RI-13 "A" SCHEDULE
 834 8214-7240/1 (REV. 11/63)
 MSC GULF FORM 7240-4

DEPARTMENT OF THE NAVY
 MILITARY SEALIFT COMMAND GULF SUBAREA
 NEW ORLEANS, LOUISIANA 70146

DATE 24 June 1975

CONTRACTOR			VESSEL	
Waterman Steamship Corp.			S.S. Robert E. Lee, G-1116	
CONTRACT NUMBER	INVOICE NUMBER	INVOICE DATE	VOYAGE NUMBER	PERIOD COVERED
SA-1820 RI-13 "A"	2664	05-23-75	4	

AMOUNT OF ORIGINAL INVOICE

\$ 99,937.50

DEDUCTIONS

Discharge Cost
 224056 cft. 5601.40 M/T \$10.25 Rate = \$57,414.35
 Plus Surcharge of 25% 14,353.59
\$71,767.94

TOTAL DEDUCTIONS \$ 28,169.56

TOTAL APPROVED FOR PAYMENT \$ 71,767.94

37a

Exh. F5

INVOICE ADJUSTMENT SCHEDULE
 BOP-RI A-7240/2(819.11/83)
 MSCGULF FORM 7240-2

DEPARTMENT OF THE NAVY
 MILITARY SEALIFT COMMAND, GULF SUBAREA
 NEW ORLEANS, LOUISIANA 70146

DATE: 13 AUGUST 1975

CONTRACTOR WATERMAN STEAMSHIP CORP.			VESSEL S.S. STONEWALL JACKSON G-1174	
CONTRACT NUMBER SA-1820 RI-13-A	INVOICE NUMBER 2701	INVOICE DATE 06-23-75	VOYAGE NUMBER 4	PERIOD COVERED

AMOUNT OF ORIGINAL INVOICE

\$ 3,843.75

DEDUCTIONS

VEHICLES HEAVY 179.10 M/T \$10.25 RATE \$1,835.78
 SURCHARGE 25% 458.95

TOTAL DEDUCTIONS \$ 1,549.02

TOTAL APPROVED FOR PAYMENT \$ 2,294.73

Defendant's Rule 9(g) Statement

STATEMENT UNDER RULE 9(g) OF THE GENERAL RULES
FOR THE SOUTHERN DISTRICT OF NEW YORK

1. Defendant, United States of America, admits the statements contained in plaintiff's Rule 9(g) Statement.

2. Plaintiff has never sought a Contracting Officer's decision relating to its eligibility under the terms of the Shipping Agreement and Rate Guide to recover discharge costs based on minimum tonnage in lieu of actual measurement tons.

3. The payments by Military Sealift Command, Atlantic referred to in Paragraph 14 of its Rule 9(g) Statement were authorized by fiscal officers employed by that command.

Dated: New York, New York
June 23, 1977

• • • • •

Opinion of Hon. Kevin Thomas Duffy

Both parties have moved for summary judgment in this maritime suit to recover ocean freight charges.

The material facts are undisputed. In July 1974, plaintiff shipping company entered into a contract with defendant, acting through the Military Sea Lift Command, for the carriage to the Middle East of certain military vehicles on plaintiff's LASH (an acronym for "Lighter Aboard Ship") barges. The agreement provided defendant with options to obtain exclusive use of the barges at a fixed minimum freight charge and to require plaintiff to offload the vehicles from the barges at the discharge ports at an increased freight rate. In a subsequent amendment to the agreement, the exclusive use option was changed to a minimum charge per barge. In addition, the contract provided for a surcharge of the freight rates if the Suez Canal was blocked.

In 1974 and 1975, plaintiff carried military vehicles for defendant aboard LASH barges on ten voyages to the Middle East. On all ten voyages either defendant exercised its exclusive use option or the minimum barge charge applied and the plaintiff was required to offload the vehicles at the ports of discharge. At the commencement of all ten voyages, the Suez Canal was closed.

Only seven of these voyages are involved in this suit. Of the total amount invoiced defendant by plaintiff for these seven voyages in accordance with defendant's billing instructions, defendant has refused to pay \$113,780.41, which amount plaintiff seeks to recover. With respect to the other three voyages, defendant initially paid the invoiced amounts

in full. However, after commencement of this action, defendant deducted a total of \$16,989.48 from other funds due plaintiff so as to effectively withhold that sum from the amount invoiced in connection with the three remaining trips.

The agreement between the parties is denominated the "Shipping Agreement and Rate Guide, RG 7." Promulgated by the Military Sealift Command and effective as of July 1, 1974, it was in part revised on January 1, 1975. Section II, ¶1(E) of the original agreement provided:

E. BARGE EXCLUSIVE USE PAYMENT. Cargo shipped in a barge required for exclusive use by the Contracting Officer for military cargo shall be freighted at the applicable cargo category rate subject to a minimum charge per barge computed by applying the Cargo NOS rate to seventy-five percent (75%) of the inside cubic capacity of the barge.

The revision eliminated this clause and provided in its stead:

E. MINIMUM PER BARGE: Vehicles shipped in a barge shall be freighted at the applicable rate subject to a minimum charge per barge computed by applying the lowest of the three commodity rates NOS, light vehicles, heavy vehicles to 300 Mt for LASH barges and 600 Mt for SEABEE barges. This minimum is applicable only when the barge is loaded exclusively with vehicles booked under the terms of this Agreement.

Since the parties have agreed that seventy-five percent of the inside cubic capacity of each LASH barge equals 300 Mt (i.e., measurement tons), the difference between the original

and revised provisions, insofar as they set forth the freight computation, is insignificant.

Section II, ¶A of the agreement gave defendant the option of requiring plaintiff to discharge the cargo and Section II, ¶C provided:

C. When the Government exercises the option set forth in "A" above, the applicable E10 [free in and out] rates set forth herein shall be increased by the charges set forth in the *Table of Charges for Stevedoring and Terminal Services* to cover cost of discharging or loading between place of rest on the ship and the end of the ship's tackle at the overseas port.

The *Table of Charges for Stevedoring and Terminal Services* expressly provides that the charges set forth therein "shall be added to the rates set forth in this section . . . when cargo loading or discharging at the overseas port is performed under the option provided in paragraph 12A of this section."

With regard to the Suez Canal surcharge, the agreement provided in Section II, ¶13:

13. SUEZ CANAL SURCHARGE

The rates for routes which would normally involve transit of the Suez Canal do not contain a contingency for Suez Canal blockage. Accordingly, the Carrier shall be reimbursed a surcharge covering additional costs resulting from such blockage . . . In accordance with commercial practice, such surcharge shall be applied on the basic rate and to the charges for stevedoring and terminal services as set forth in the STATEMENT OF RATES when stevedoring is performing by or for the account of the Carrier.

For each of the ten voyages plaintiff calculated the freight by adding the charges for offloading the cargo to the basic F10 rate and then multiplying this figure by 300 Mt to produce, in plaintiff's view, the "minimum" total freight per LASH barge. To this purported "minimum," the twenty-five percent Suez Canal surcharge was added. The only difference between the invoices submitted for the seven voyages in issue and the three other trips was that, in the former instances, plaintiff separately invoiced the carriage and offloading charges while in the latter, these charges were lumped together. For the seven voyages in question, defendant declined to pay a portion of the offloading charges on the ground that these charges should not have been multiplied by the 300 Mt minimum, but, rather, by the actual measurement tonnage of the vehicles carried.

The narrow question thus presented is whether, according to the terms of the agreement, the offloading or discharge charges are to be considered as freight charges to which a 300 Mt minimum applies. The unambiguous language of the agreement indicates that such is not the case.

It is manifest that the cargo in this case was to be "freighted" on a minimum basis of 300 Mt regardless of its actual size. It is equally clear that this rate was to be "increased" by stevedoring and terminal charges. Indeed, the plaintiff itself asserts that all of its services "were covered either by the basic freight rate or by an increase in the basic freight rate." It is elementary that there could be nothing to increase if no basic freight rate were established; in order that it be so established, the minimum basis must first be taken into account. To include the increase in the computation of this basic freight rate would be to render senseless the provision affording plaintiff the increase.

The purpose of affording plaintiff a minimum in computing the freight rate is not explicit; it suffices to say that it benefits the carrier. However, the purpose of the increase is express. According to Section II, ¶ 12C, it was designed merely "to cover [the] cost of discharging." As defendant has pointed out, there is no cost involved in discharging cargo which is not on board the vessel. To subject this increase to the minimum basis allowed for the computation of freight would be to grant plaintiff a double advantage not contemplated by the clause.

Further support for the clear intendment of the agreement is found in the paragraph providing a Suez Canal surcharge. That clause specifically provides that the surcharge is applicable to both "the basic rate and to the charges for stevedoring and terminal services . . . when stevedoring is performed by . . . the Carrier." There would be no necessity for this express distinction if the agreement contemplated the lumping of the latter charges in the former rate. Plaintiff tosses this distinction off by asserting the irrelevance of the illogic of the rate structure. Yet an analysis of the provisions in issue, read in conjunction with the agreement as a whole, see *National Equipment Rental Ltd. v. Reagin*, 338 F.2d 759, 762-63 (2d Cir. 1964), reveals an integrated and logical whole susceptible of only one interpretation. To hold otherwise would be to reach an illogical result.

To bolster its interpretation, plaintiff offers the fact that the invoices on the three voyages which are not included in this suit were paid in full by defendant notwithstanding plaintiff's contrary computation of the offloading charges, and that it was not until after the institution of this action that defendant sought to recompute the charges

and withhold amounts previously paid so as to give consistency to defendant's position. It is undisputed that these payments were authorized by a fiscal officer and that plaintiff did not seek the advice of a government official with contracting responsibility in connection therewith.

Since the language of the agreement is unambiguous, it is unnecessary to resort to a consideration of the parties' own interpretation of the provisions in issue. However, the possibility that a fiscal officer, having no responsibility for monitoring the performance of the contract, would make a mistaken payment thereunder was not one overlooked by the agreement. Article I:4(c) expressly grants defendant the right to recover overpayments of freight by withholding from sums otherwise due a carrier. Presumably, then, plaintiff was aware of the possibility that such an overpayment may be made. In this connection it has been recognized that

When the canon of construction speaks of giving weight to the "parties'" own interpretation, it refers, so far as the Government is concerned, to a responsible officer assigned the function of overseeing the essentials of contract performance- -not to any federal employee or officer whose work happens to be connected with the contract. Agency fiscal or finance officers are not ordinarily a significant part of the process of negotiating and performing contracts.

Deloro Smelting and Refining Co. v. United States, 317 F.2d 382, 385-85 (Ct. Cl. 1963). See also *Dana Corp. v. United States*, 470 F.2d 1032, 1044 (Ct. Cl. 1972). Under the circumstances here presented, I cannot help but agree.

45a

Plaintiff's motion for summary judgment is denied; defendant's cross-motion for summary judgment dismissing the complaint is granted.

IT IS SO ORDERED.

KEVIN THOMAS DUFFY

Dated: New York, New York
October 5, 1977.

Judgment Entered October 7, 1977

Both parties having moved the Court for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motions having come on to be heard before the Honorable Kevin Thomas Duffy, United States District Judge, and the Court thereafter on October 6, 1977, having handed down its opinion and order denying plaintiff's motion and granting defendant's motion for summary judgment, it is,

ORDERED, ADJUDGED and DECREED: That defendant UNITED STATES OF AMERICA have judgment against plaintiff WATERMAN STEAMSHIP CORPORATION dismissing the complaint.

Dated: New York, N.Y.

October 7, 1977

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK

COUNTY OF NEW YORK

} s.s.:

Ramon I. Constantino, being duly sworn, deposes and says that he is a clerk in the office of Burlingham Underwood & Lord, *Attorneys* for *Plaintiff - Appellant Waterman Steamship Corp.* herein; that on the *10th* day of *February*, 19*78*, he served the within *Joint Appendix* by mailing a true copy thereof, securely enclosed in a postpaid wrapper, in the post-office box regularly maintained by the United States Government at One Battery Park Plaza in said County of New York, to each of the following:

Mr. Michael Kimmel
Civil Division Appellate Section
Department of Justice
Washington, D.C. 20530

The address of each of the above is the address designated by each of them for that purpose upon preceding papers in this action, or the place where each then kept an office.

Sworn to before me this *10th*
day of *February*, 19*78*.

James P. Sawicz

Ramon I. Constantino
Notary Public, State of New York
No. 41-4026051
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1979